IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6046 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PRAKASH RAMJIBHAI MARVADI (MOCHI)

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6046 of 2001

MR AM PAREKH for Petitioner No. 1

RULE SERVED for Respondent No. 1,3

MR K.T.DAVE, AGP for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/09/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Ahmedabad

City, Ahmedabad, vide order dated January 6, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2(c) of the Act and as one case is registered against the petitioner under sections 4, 5, 6, 7 & 8 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 and statements of two witnesses are recorded, according to the detaining authority the activities of the petitioner are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act are exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty.

4. Today, when the matter is called out for final hearing, Mr. K.T.Dave, learned AGP appeared on behalf of the respondent State and he drew my attention to the fact that the present petitioner had filed Special Civil Application No. 1423 of 2001 before this Court wherein similar relief was claimed and this Court (Coram : H.K.Rathod, J) vide judgement dated July 25, 2001 allowed the petition and thereby quashed and set aside the order of detention and directed to set the petitioner at liberty forth with. He further contended that in para 20 of the present petition, petitioner has made an averment that he has not filed any other appeal or application or writ petition either before this court or any other court except this petition, and therefore, the petitioner has made a wrong statement on oath. Mr. Dave, therefore, contended that for the same cause of action, petitioner has filed two petitions and thereby he has abused the process of this Court and for that heavy cost may be awarded against the petitioner.

5. Mr. A.M.Parikh, learned advocate for the petitioner, does not dispute the fact that the petitioner had filed Special Civil Application No. 1423 of 2001 for the same relief and by virtue of the order passed in that petition, petitioner is set at liberty. However, he requested that he may be permitted to withdraw this petition and requested not to pass any order awarding

cost against the petitioner.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the petition as well as the impugned order and the order dated July 25, 2001 recorded by this Court in Special Civil Application No. 1423 of 2001 by which the petitioner detenu is ordered to be set at liberty forthwith.

7. On the facts and in the circumstances emerging from the record of the case, there is no manner of doubt that the petitioner has filed two separate petitions through different lawyers seeking the same relief and therefore, obviously he has abused the process of this Court. Therefore, he must be saddled with the cost of this petition which I quantify at Rs. 2000/- (Rupees two thousand only).

8. For the foregoing reasons, leave to withdraw the petition is granted. Petition stands rejected as it is withdrawn with cost of Rs. 2000/-(Rupees two thousand only) to be paid to the respondent State. The petitioner shall deposit the said amount of cost in the registry within a period of four weeks hereof failing which the registry is directed to take appropriate action to recover the said amount from the petitioner as arrears of land revenue through the District Collector, Ahmedabad.

Rule is discharged with cost as aforesaid.

(A.M.Kapadia, J)

Jayanti*